No. 13,631

STATEMENT OF QUESTIONS

THE QUESTIONS PRESENTED ON APPEAL ARE:

Did the Court below err in granting the defendant's motion for Summary Judgment either for the reason that the plaintiff's claim was barred by laches or for the reason that no statutory right of the plaintiff had been denied in firing him from his position as Engineer (Naval Architect).

Or is a United States Civil Service employee to be victimized as the result of the indecisions, intimidations, motives, errors, prejudices, incompetence, disinterest and insinuations by his supervisors, other employees, officials and other personnel of the military or civilian organizations of a departmental agency and/or a judicial department of the United States Government?

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,631

ANDREW J. EASTER
Appellant

v.

CHARLES S. THOMAS
Secretary of the Navy
Appellee

Appeal from the United States District Court for the District of Columbia Circuit

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BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal by appellant, Plaintiff below, from the order filed October 1, 1956, (app. p. 43A) denying the motion to set aside an order of the United States District Court for the District of Columbia and or granting defendants motion for Summary Judgment rendered June 26, 1956 for the appellee, the defendant below (pp. 36A)

Jurisdiction of this appeal is conferred upon this court Section 1291, title 28 U.S.C.A.

STATEMENT OF FACTS

On March 25, 1952, the plaintiff, Andrew J. Easter, having exhausted his administrative remedies, (App. p.

23A) filed a complaint in the United States District Court for the District of Columbia asking that the Navy Department's action in separating him from the service be held unlawful and that such action be set aside. This action was entitled Andrew J. Easter v. Dan A. Kimball, Secretary of the Navy, Civil Action No. 1307-52. For many months there followed a concerted action on the part of the plaintiff to compel the defendant to answer this complaint, notwithstanding the fact that the applicable statute allows the United States Government only sixty days to respond to such a pleading. This is fully explained in the affidavit of plaintiff's counsel which was not controverted. (See app. p. 33A)

On July 7, 1952 Defendant filed a motion for Summary Judgment (almost identical to the one filed in Civil Action No. 1174-54,) in Civil Action No. 1307-52. The motion was denied, but the plaintiff was required to file an amended complaint seeking his relief under a different statute. The amended complaint was filed promptly in Civil Action No. 1307-52, but notwithstanding this fact the Government still would not file an answer to the complaint even after its motion for Summary Judgment had been denied and after the Court had indicated that the plaintiff was in all likelihood entitled to the relief he was seeking (See app. p. 31A) (partial transcript of Civil Action No. 1307-52), and not until April 7, 1953, was an answer ever filed by the defendant to the original complaint or amended complaint, over a year after the original complaint was filed.

On January 19, 1953, three months before the Government had ever filed an answer to the original complaint, the defendant, Dan A. Kimball resigned as the Secretary of the Navy, and on February 4, 1953, he was succeeded by Robert B. Anderson. During this period of time the plaintiff, in his attempt to secure the necessary responsive pleading from the Government to his suit was distracted from the requirement under the Federal Rules of Civil

Procedure to substitute a party defendant within a six month period. (See app. p. 33A) Realizing that the Federal Rules of Civil Procedure require the abatement of an action on the failure to substitute within six months a party defendant, the plaintiff consulted the Government about a voluntary dismissal of Civil Action No. 1307-52 with the understanding that a new action would be filed against the then Secretary of Navy, Robert B. Anderson. This was agreed upon, and the Government's Motion to Dismiss, which had been filed at the suggestion of the plaintiff, was consented to, the order of dismissal was signed on March 9, 1954 and the new suit, Civil Action No. 1174-54, was filed on March 19, 1954, (App. p. 2A, 34A); **ten days after the original suit was dismissed.** (see app. p. 43A, 5-6) The Government did not answer this complaint until September 27, 1954. (App. p. 9A)

On May 2, 1954, the defendant, Robert B. Anderson, left the office of Secretary of the Navy, and on May 3, 1954, the present defendant, Charles S. Thomas, became the Secretary of the Navy. A motion to substitute party defendants was timely filed (See app. p. 7A); and the order substituting the party defendant was signed July 8, 1954, *said order being consented to by the Government* (See app. p. 8A). There was no other activity in the action until after the matter had been pre-tried at which time the Government again filed a Motion for Summary Judgment on the grounds previously submitted in Civil Action No. 1307-52 and on the additional ground that the plaintiff was guilty of laches. (App. p. 12A)

This matter came on to be argued on the defendant's Motion for Summary Judgment on June 25, 1956, together with the plaintiff's Opposition filed thereto as well as the plaintiff's Cross-Motion for Summary Judgment. In the first instance the defendant said that the plaintiff's claim was barred by laches. In support of this claim the government submitted that the first complaint

filed by the plaintiff abated when he failed to substitute the party defendant when the defendant Dan A. Kimball was succeeded in the office of Secretary of the Navy by Robert B. Anderson. The Government then made the misleading statement that the previous action, Civil Action No. 1307-52, had been dismissed by this present action, when in fact it was the plaintiff who had asked the defendant to take that action. (See supplemental affidavit of plaintiff's attorney, app. p. 34A)

The Court had before it on the hearing of this motion in consideration of this contention the affidavit of the plaintiff (app. p. 32A), the affidavit of the plaintiff's attorney (app. p. 33A) and the supplemental affidavit of the plaintiff's attorney, (app. p. 34A).

The Government, on its second point that no statutory right of the plaintiff had been denied, relied on the affidavit of George A. Holderness which was Exhibit #1 of the defendant's motion, (This affidavit submitted evidence of certain procedures which had been used in terminating the plaintiff, including the letter of March 26, 1951, Exhibit #2, which set out an array of charges against the plaintiff-appellant) the answer of the plaintiff to those charges which was Exhibit #4, the notice setting a date for a hearing by letter of April 3, 1951, Exhibit #5, the notice of action after the hearing by letter of May 12, 1951, which was Exhibit #6, a letter replying to the appellant dated November 28, 1951, Exhibit 9, and a set of the Navy Civilian Personnel Instructions, all being a part of the defendant's Motion for Summary Judgment.

In opposition to this contention the plaintiff showed that there had been a statutory denial in a letter mailed to him by the Navy Department dated May 12, 1951, Exhibit #6 (app. p. 22A), in that this communication merely stated that after consideration of his answer and after the hearing the Chief of the Bureau of Ships, H. N.

Wallin, had "considered all of the facts presented in your case and hereby notify you that you will be removed for cause effective close business 14 May, 1951." Plaintiff contended that this notice denied him every right to present an appeal that could be fairly objective and effective for the reason that the notice had failed to say what charges had been sustained as it was definitely known that only an insignificant charge of tardiness was sustained and no evidence was offered on some charges. This made all the difference because most of the charges would not permit a dismissal under the Navy Department Regulations.

STATEMENT OF POINTS

1. The Court erred in granting the defendant-appellee's Motion for Summary Judgment in granting it on the Government's claim that the action was barred by laches, the plaintiff not having been guilty of any delay whatsoever in the entire proceedings either admisitratively or judicial, and all delay having been the result of the *Government's negligence or willful refusal* to lawfully respond to the pleadings filed by the plaintiff.

2. The Court erred in granting the defendant-appellee's Motion for Summary Judgement in granting it on the grounds that the plaintiff had not been denied any statutory right, the plaintiff-appellant having been denied a statutory right in that the removal was arbitrary.

SUMMARY OF ARGUMENT

The plaintiff-appellant was not guilty of any delay or action that could be deemed to be laches. The lapse of time from the date of the exhaustion of his administrative remedies until the time that the present suit was filed was consumed almost entirely by the defendant-appellee's failure to file the responsive pleadings as required by law.

That the failure to substitute parties was merely cause for abatement and did not bar the present action, and the statute so states. That the failure to substitute party defendants was caused by the defendant-appellee's own negligence in not filing the required responsive pleadings and thereby distracting the appellant's attention from the necessity of substituting the party defendant.

On the second point the plaintiff was denied a statutory right for the reason that after being presented with a long array of charges which under its own Navy Civilian Personnel Instructions were in almost every instance only grounds for some minor sanction on the first alleged violation (as was the case here), the plaintiff-appellant was then merely notified with a blanket statement that the charges had been sustained and he was being removed. On many of these points no evidence whatsoever had been presented, so it must necessarily be concluded that only certain minor charges could have been sustained, and without knowing which charges these might be it was absolutely impossible for the plaintiff-appellant to present an effective appeal.

ARGUMENT

I. The Plaintiff's Claim Was Not Barred By Laches

Although plaintiff's counsel diligently attempted to secure an answer or other appropriate responsive pleadings to the complaint filed in this cause on March 25, 1952, Civil Action No. 1307-52, for unexplained reasons the government did not file such a pleading until July 7, 1952, when a motion almost identical to the instant case was filed. That the motion was ruled on by this Court on October 15, 1952. *See Transcript Easter* v. *Kimball 1307-52.* While the appellee's Motion for Summary Judgment, which the District Court granted dismissing this action, would lead one to believe that the sum and

substance of the action taken by the Court on the original Motion to Dismiss the first action filed, was to require the plaintiff-appellant to file an amended complaint, this was merely incidental to the Court's ruling which was to deny the defendant-appellee's motion in most emphatic terms. (See official transcript of argument of motion in Civil Action No. 1307-52 app. p. 30A). More important still is the fact that the answer to the plaintiff's complaint was not filed until April 7, 1953, although the complaint was filed March 25, 1952; more than one year had elapsed between the filing of the complaint in the first suit and the answer thereto. Thus it clearly shows that the great portion of time between the time of the exhaustion of the plaintiff's administrative remedies on the illegal discharge and the time of the filing of the present complaint was due entirely to the inactivity of the defendant. As was stated in the plaintiff's opposition to the defendant's motion for Summary Judgment: (See app. p. 25A-26A).

> "Another misleading statement appearing in defendant's motion is found on page 2 and reads:
>
> > 'It was the Government's motion that the dismissal on the grounds of abatement was granted.'"

The affidavit of plaintiff's counsel (app. p. 34A) clearly shows that the Government filed the motion to dismiss at the suggestion of said counsel when he discovered the failure to substitute the party defendant, and he told counsel for the Government he would file no objections so the complaint could be declared abated and the present action filed. With the plaintiff's consent to the dismissal of the first action, Civil Action 1307-52, the same was dismissed on March 9, 1954 and on March 19, 1954, ten days later, the present complaint was filed; however, the answer thereto was not filed until September 27, 1954.

So, while the appellee claimed in their motion on which the Court dismissed this action that the plaintiff took no

action from the time that the first complaint was filed until the filing of the complaint in this action which is now on appeal, see transcript Easter v. Thomas, 1174-54 (app. p. 43A, 5-6); in truth it was the Government which took no action until the plaintiff's counsel requested that Civil Action No. 1307-52 be dismissed in order that the complaint in this case could be filed.

Because of the facts set forth above, and because the doctrine of laches is an equitable doctrine, the defendant's points and authorities on the question of laches become totally inoperative. Never was there a more classical case where the maxim,

> "He who seeks equity must do equity" and "He who comes into equity must come with clean hands"

demands application. For it is elementary that these doctrines signify that a litigant will not be heard to claim equity where his own conduct has been inequitable. *National Fire Insurance Company* v. *Thompson 281 U.S. 331.*

The court below, in granting the defendant's motion was declaring the plaintiff guilty of laches for failure to substitute a party defendant, when for the greater period of that time the Government had not even filed an answer to the complaint. It should be noted that the very wording of Rule 25d Federal Rules of Civil Procedure in stating that the action abated on failure to substitute within six months makes it extremely clear that had Congress intended this failure to be the end of the cause of action then it would have provided in this rule that the failure to substitute would be a bar to the action and not to an abatement. (Rule 25d, Federal Rules of Civil Procedure) Moreover, the case of *Snyder* v. *Buck,* 340 U.S. 15, specifically grants the party whose suit has abated the right to start over when there has been failure to substitute. *The question of whether laches is present after a person has started over would in all cases de-*

pend on the circumstances and facts surrounding each case. Had the Supreme Court felt that failure to substitute within a six month period was in and of itself a bar to another action, it certainly would have so stated instead of saying exactly to the contrary that a new action could be brought.

Nor, could the appellee claim that failure to substitute had been detrimental to the Government because the affidavit of the plaintiff's counsel (app. p. 35A) clearly shows that for the greater part of the period in question the plaintiff was employed at a salary greater then that he had received as a government employee, and that time was not detrimental to the government except for the loss by the government of the services of the appellant who was rated a P-5 in 1946 (app. 45A) yet was doing meritorious services beyond his rank and duties for a P-3 [Trans. p. 122), Transcript of Removal Hearing 17 April 1951]

> "Easter can do this job better than any of us, because he knows ships. He knows drafting. This *combination is rare,* in my opinion, *in the stability section."*

His insistance in designing the merchant naval vessel (a beneficial suggestion) created on his own time, and that witnesses and other parties are still available.

II. A Statutory Right of the Plaintiff Was Denied In Separating Him From His Position With The Navy Department

The Government's position that no such right was ever denied was passed upon by the United States District Court for the District of Columbia *in this very matter* through Judge Luther Youngdahl. This took place when the Government argued a previous motion almost identical to the one which was granted in this cause in the first action filed by the appellant, Civil Action No. 1307-52.

When that motion for Summary Judgment was argued Judge Youngdahl ruled:

> " • • • it seems to me a fundamental requisite in the due process of law and fair hearing that an individual is entitled to be informed as to what specific charges he is being removed under because it might make some difference if he wants to take the case up on review as to what charges the Government sustained • • • ."

It is vital to note that not only has the Government once submitted the same question to the Court on Appellant's discharge, but their previous motion was supported with substantially the same exhibits, affidavits and authorities and despite the fact the Court emphatically denied the motion, it is now being submitted again.

The Government's position on the jurisdictional question as stated in the Motion to Dismiss admitted that the Court does have jurisdiction in cases where the Federal employee was dismissed contrary to the statutory requirements of Title 5, Section 652, LLOYD-LaFOLLETT Act. As was stated by this Court in the case of *Powell* v. *Brannan, 91 U.S.App.D.C. 16,* judicial relief is available when those statutory procedures have been departed from,

> "When there has been a substantial departure from applicable procedures, a misconstruction of government legislation, or like error going to the heart of the administrative determination, a measure of judicial relief may, on occasion, be obtainable."

The same principal is announced in *Deake* v. *Pace, 88 U.S.App.D.C. 50.*

The defendant-appellee's theory in this matter can be clearly understood by a reading of page 4 of the Government's motion beginning with paragraph #6 and continuing through that page. There, the Government poses the question, "What are the procedures required by the act?"

Then the question is answered by saying a notice in writing is required, a copy of the charges, and a reasonable time to file a written answer. (Actually, there is more in the actual wording of the statute than these requirements, but for the point being made, these set forth are sufficient.) Then, the Government says that the exhibits show that these things were done. To state it another way, the Government is saying that if the particular agency goes through this form, the discharged employee cannot, under any circumstance have recourse to the Court, or that the statute is one of form, and not of substance, because under this theory the particular officers concerned could trump up any false charges to discharge an employee, for purely personal reasons, and then follow the form, and say the discharged employee was without judicial relief.

Although such a contention reduces the statutes to a fallacy, it is the position the Government has taken in this matter from the very beginning, even in the first action before it was abated, and the one that Judge Youngdahl stated was not correct in the discharge of this employee or any employee who comes within the provision of the statute.

The most important point in this matter is one which the defendant claimed in the Court below was being raised for the first time, but which the transcript of the hearing before Judge Youngdahl conclusively shows was the very contention upon which a previous motion for Summary Judgment in the first action was denied, namely the fact that the agency in discharging the plaintiff merely informed him that he was being removed without telling him which of the many charges against him had been sustained. (App. p. 22A) The letter from the Navy Department dated March 26, 1951, (app. p. 13A) shows the many charges which were hurled against the appellant. The Navy Civilian Personnel Instructions pages 29-36 show the range of the penalties for the charges. Penalties

vary according to the graveness of the charge and the number of times the offense has been committed. Therefore, it would be impossible to prepare an appeal; but the discharged employee here was forced to file what purported to be an appeal but which for the fact he did not know which charges had been actually sustained against him really could amount only to a general prayer for relief to the Secretary of the Navy. In paragraph 9 of the defendant's answer filed April 7, 1953 and the answer to the complaint in this suit, defendant admits, and in fact stated, *"that plaintiff was not furnished with findings of fact."* (app. p. 10A). This is the reason Judge Youngdahl asked the government counsel the following question when this motion was being argued in *Civil Action No. 1307-52:*

> " • • • THE COURT: Don't you think, as long as the Government provided specific charges, and that after that you indicated to him what charges—
> MR. STRICKLER: I think it might be advisable, Your Honor, but not required under the statute. I say that by referring to the code itself.
> THE COURT: Just on the basis of the code?
> MR. STRICKLER: I say it would be advisable.
> THE COURT: How does he expect to come into Court and raise a defense on a general statement? He doesn't know what it is. A charge of insubordination requires an entirely different charge than these other charges. It seems to me that as a basis for an adequate hearing the Government should indicate on what basis he is being discharged.
> MR. STRICKLER: As I say, if I were giving advice to the agency on which charge, I would say yes, but counsel has stated to the Court that there was a frame-up, and they had merged all charges to get rid of him. If that is true, Your Honor, this Court has no power, no jurisdiction or authority to inquire into his guilt or innocence.
> THE COURT: Unless that should fit into the pattern of arbitrary action, and it should appear in addition that the action was not in accord with the rule, that would be corroborating testimony."

Furthermore, it is clear that Judge Youngdahl understood that this was not adequate notice within the contemplation of the statute when he said, on page three of the partial transcript:

> " • • • there would be a serious question in my mind whether this is adequate notice, even in the statement, that might not indicate arbitrary action on the part of the Government • • •"

Finally, the plaintiff submits, not to be repititious, but for point of emphasis, what Judge Youngdahl said in ruling upon the motion on October 15, 1952:

> "THE COURT: Will you read that letter for me counsel? What is the nature of that?
>
> MR. STRICKLER: It reads:
>
> > 'By reference (a) you were notified of the proposed action to terminate your employment for cause. By reference (b) you replied to the charges contained in reference (a) and requested a hearing. A hearing was granted, a board was appointed by me to hold the hearing and make recommendations to me and hearings were held on 5, 9, 10, 17 and 18 April, 1951. I have considered all the facts presented in your case and hereby notify you that you will be removed for cause effective close of business 14 May 1951.'
>
> THE COURT: That is what I had in mind. It seems to me a fundamental requisite in the due process of law and fair hearing that an individual is entitled to be informed as to what specific charges he is being removed under because it might make some difference if he wants to take the case up on review as to what charges the Government sustained. I think under all the circumstances in a case of this nature the Court should not grant summary judgment, but should let it go to trial.
> You may draw an Order."

The appellant respectfully submits that the Government's motion was properly denied when it was first argued before Judge Youngdahl and that at that time

the Court pointed out where the Government had failed in properly discharging the plaintiff according to law. For the same reason the appellant now urges this Court that the defendant-appellee's motion for Summary Judgment in this case should have been denied.

The history of the decisions of this Honorable Court is an example of the fact that what the Court is always interested in is justice under the law. For this reason the Court's attention is called to the fact that on March 31, 1950, an efficiency rating on appellant in his position from which he was discharged the following year rated him as "very good" and all the various categories for rating the employee on that report show + if outstanding, +(6) *Attention to pertinent detail*, +(12) *Rate of progress on or completion of assignments*, + (16) *Cooperativeness* and adequate, in meeting and dealing with others, initiative, etc. (app. p. 44A) Likewise, on March 31, 1949, he had been rated "very good" and yet on March 26, 1951, he was confronted with the array of charges, most of which there was never any evidence presented in support of, yet the Chief of the Bureau of Ships stated in his letter of May 12, 1951 (app. p. 22A) that he had studied the transcript of the hearing and the charges were sustained.

Appellant should not be victimized for the various irregularities, and deliberate efforts of Wright, appellant's supervisor, to tarnish, discredit and discolor appellant's ability, industry, efforts and final results of appellant's works and for the motives for the arbitrary action taken in firing the appellant for his patriotic diligence in conceiving, designing and proposing the adoption of appellant's beneficial suggestion of a *Merchant Naval Vessel* (see app. p. 40A para. 13) which dismissal has caused undue hardship by his being blacklisted by many places who would not employ appellant "until status was cleared with Navy" when at the same time begging for drafts-

men, and the large expense incurred in this litigation, anxiety, and ridicule.

The inadvertence of counsel in not substituting party defendant in the original cause due to his anxiety in waiting for defendant's counsel to answer the proceedings (app. p. 34A) and the disinterest of the lower court in not reviewing the records etc. before ruling on Summary Judgment in favor of Appellee, Defendant.

That testimony clearly shows appellant was conscientious and industrious. When appellant was prosecuting his fourth stage of a grievance proceeding (app. p. 20A line 16), which he was coerced into by a Civil Service representative and the O I R as a duty, for the good of the Navy Department and the country; the appellant's supervisor Charles L. Wright stated "Andy, you are an asset to this institution, I and the section will assist you in what you are doing". Appellant had produced meritorious work while employed by the Navy Department and devised a multipurpose interchangeable type of ship which idea was beyond his call of duty, whereas there are government personnel in Code 444 and elsewhere, military as well as civilian, who sleep on the job, use the office for personal interests and business; and Comdr. Ramsey, who damned this country, and told Wright "if you don't have anything on him, frame him" (referring to appellant); supervisors (Wright and Moore) who sarcastically commented on the Bureau's administration and whose indecisions required 2 men to take 2 months in changing a model plan (app. p. 17A Line 15); and that a supervisor, Charles L. Wright, was required to write up his job orders due to indecisions (app. p. 21A Line 7) and who was thanked by the administrative officer for his cooperation in the removal action and was promoted to P. 6 and transferred to submarines where he had no experience whatsoever.

Appellant's former services in Code 459, where uncontested records show he devised, planned and drew the first or basic plans of most of the Naval Auxiliaries,

73% of the basic designs and 50% of the actual production as key engineer in a section of 8 men assigned to do the same work and who worked overtime, evenings, Saturdays and Sundays without compensatory pay; whose supervisors were always at odds, all were foreign born, and Samuel B. Crosby, the section chief, permitted Harry Cox, another foreign born employee, to take a two-hour walk every day without charging it against his leave, and often said that "he (Crosby) would be there long after these SB's [(military officers) my own] are gone and forgotten", and who gave another foreign born employee, Breinert B. Madsen, a $500.00 a year raise so he could buy a $25.00 a month bond, this same employee often told the appellant "You are in my way. (App. p. 41A para. 15). I could go places if it were not for you", that he hated the British, the capitalists and the supervisors, this same employee is at present in charge of arrangements in the Navy Department, yet is not a designer, he devoted much of his work day in making out income tax forms and making studies for building a house, and altho he would be at the office before start of work he would immediately leave the room every morning for 15-20 minutes. And whereas Samuel B. Crosby ignored his assistant Robert W. Bruce's objections to the government paying a design agent $185,000 plus $7000 fee for removing the Government title stamp and reproducing by C B process one of appellants plans and submitting it to the government under their stamp. Appellant was charged two hours leave to carry his exhibits to and by the request of the Board of Awards of the Navy Department in reference to the proposed merchant military vessel, a Beneficial Suggestion (app. p. 37A 146)

The following partial questions to and answers from government supervisors and employees, taken from the transcript of the Removal Hearing, (in reference to the charges against Andrew J. Easter, Appellant), held at the Navy Department, identified in the original record on file in the Court of Appeals, as exhibit #13.

10 April 1951

Questions to Mr. Moore & answers,

pg. 44—has Easter ever been disrespectful to you? No, he hasn't.

pg. 51—did anyone ever come to you and tell you that he was annoying them? I don't recall that anybody ever did.

17 April 1951

Questions to Mr. Shapiro & answers,

pg. 38—I have never noticed that he was disrespectful. p. 43—were these changes made willingly? Oh, yes. p. 47—was particularly argumentative or troublesome — ? No, sir. p. 55—ever made a nuisance of himself to you? No, sir. p. 57—any of these discussions as insubordinate on his part? No, sir.

Questions to Mr. Christensen and answers,

p. 80—Easter do things—as a nuisance — ? No.

p. 82—affected your morale? No, sir.

p. 83—affected morale of others — ? No, sir.
——found an abnormal number of errors? No, sir.

p. 84—overall appraisal of—work—? He has done a number of jobs with not much assistance.

—caliber of work—? I would say, good.

p. 92—does that appear like a good job (DD 927) to you? Yes, sir. It looks like a very nice job. p. 95 Is that good work (CVA-58)? p. 96—that was perfect.

p. 97—Is that a good piece of drafting work, (Monograph)? This looks fine to me. p. 101 impress you as being a good piece of work (CVE-105-127)? Yes, That is eminently a good piece of work. p. 103—ever refused to make any corrections — ? No, sir. p. 104. types of work. p. 106 Is he capable of making these calculations? has done all of those that I said. p. 108 Easter's work is very, very good——. p. 109 When we come to the cal-

culations, — he nevertheless has done it, again and again. — said to his praise, ——, has applied himself and now makes calculations? Oh, yes. p. 110. He had done all these calculations. p. 113 Have had arguments with him? Never. p. 116—did . . some . . elaborate calculations — ? That is right. p. 118 Yes, sir, I can say it it good. I will not therefore say that he cannot make a mistake. p. 121 In general, he does all types of work. p. 122—can do this job better than any of us ——.

p. 124 He has been chosen for doing all the later models. p. 131 At times very interested, very interested. p. 137 has gotten along very well with all of us up there.

18 April 1951

Easter p. 1-131—did all types of work—integrations—classified work and purpose—gave up vacation—known as pump handle—work horse—DD 927—exceptional work —no assistance—Le Roy lettered—drawn to exact scale—directive directing 3/40 inch=1 ft.—which had to be converted on a calculating machine to a workable scale in every incident. — did all the different types of work—(app. p. 17A) including calculations—and drafting for 4 different checkers—who specialized—and handed work to me—piecemeal and at various stages.

The Chief of the Bureau of Ships, the supervisors and others were being promoted, some with commendations, on the ingenious efforts (the Baby Flat Top of the Navy) and production of the appellant, who was at the same time being intrigued against and beaten down, and is still being discredited throughout these proceedings.

It is alleged that the arbitrary firing of plaintiff was prompted by his asking Questions at 440 forum Dec. 7, 1950 reference his combined, interchangeable, multipurpose Merchant Naval vessel (app. p. 20A Line 17) and his dili-

gence in submitting same for adoption which would aid peace on earth and eliminate public debt created by military appropriations by the governments of the world.

The action of this court pertaining to the action of the court below would either tend to prevent further and continuing arbitrary practices by administrative officials and their assistants, which practices retard initiative of present conscientious government employees, who are interested in the welfare of this nation, from continuing to do so, in spite of the many notices and requests for beneficial suggestions, etc.

CONCLUSION

It is respectfully submitted that the plaintiff was not guilty of laches and the record has evidenced in the joint appendix and from the matters pointed out in this brief that the rights of the appellant were definitely denied him in his separation from the Department of the Navy. For these reasons it is respectfully submitted that the action of the U.S. District Court for the District of Columbia in this matter be reversed and remanded.

ANDREW J. EASTER
In Proper Person
2801 Adams Mill Road, N. W.
Washington 9, D. C.

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,631

ANDREW J. EASTER
Appellant

v.

CHARLES S. THOMAS
Secretary of the Navy
Appellee

Appeal from the United States District Court for the District of Columbia Circuit

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JOINT APPENDIX

26 Filed Mar 19 1954 Harry M. Hull, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1174-'54

ANDREW J. EASTER
2801 Adams Mill Road, N. W.
Washington, D. C.
Plaintiff

v.

ROBERT B. ANDREWS
Secretary of the Navy
Room 42710, Pentagon
Washington, D. C.
Defendant

COMPLAINT TO HOLD UNLAWFUL AND SET ASIDE AGENCY'S ACTION

1. This Court has jurisdiction of the subject matter by virtue of Title 5, Section 652, U.S.C.A., the allegations of this Amended Complaint being that the defendant's agency has failed to comply with the provisions of this statute.

2. The plaintiff has been an employee of the Department of the Navy twelve years. During this employment he made advancement and rendered service above average as is borne out by his efficiency ratings over this period.

3. On November 28, 1951, by letter from the Under Secretary of the Navy, the plaintiff was notified that his appeal from the Bureau of Ships was denied and it was his final action in connection with his appeal. Therefore, plaintiff has exhausted his administrative remedies.

4. By virtue of a letter of May 12, 1951, the plaintiff was notified by Chief of Bureau of Ships, Department of Navy, that he would be removed for cause on May 14, 1951.

5. The letter referred to in paragraph 4 makes reference to the plaintiff's request for a hearing, and to the fact that a hearing was had on April 5, 9, 10, 17, and 18, of 1951; and further states "I have considered all
27 of the facts presented in your case and hereby notify you that you will be removed for cause effective close of business 14 May 1951".

6. By letter of March 26, 1951, the Chief of Bureau of Ships notified the plaintiff that that Bureau was considering termination of the plaintiff's employment. The letter then enumerated certain charges on which the referred to determination was to be based. These charges were:

(a) Unsatisfactory performance.

(b) Insubordination.

(c) Disrespectful attitude toward supervision.

(d) Unreliable attendance.

(e) Your lack of interest in your work and the overall effect of your expressions upon the morale of other employees.

This letter of March 26, 1951, was the only warning that this agency had ever given to the plaintiff that his services were not satisfactory.

7. The Department of Navy has formulated regulations for the purpose of disciplinary action, removal and prohibition of its civil employees; such regulations being titled Navy Civil Personnel Instructions or N.C.P.I. Said instructions are to uniformly guide the taking of disciplinary action against and removal of all civil employees of the Navy Department.

8. The charges enumerated in paragraph 6 are specifically dealt with in the "Instructions" referred to in paragraph 7. The charge of insubordination provides for removal without warning. The four charges provide for action other than removal on first warning. The only conclusion being that if the Board set up to hear the evidence and the official who reviewed that evidence and notified the plaintiff of his termination followed the department's own instructions there would, of necessity, have had to have been a finding of insubordination to remove the plaintiff under these instructions.

9. After a protracted hearing on the several aforementioned charges, only one of which the plaintiff could have been discharged, there was furnished to the plaintiff absolutely no findings of fact from the involved testimony nor was there delivered to him any decision that would enable the plaintiff to know which of the divers acts of which he was charged it had been found there was evidence to sustain, and just what evidence sustained what charge. This was completely arbitrary, because if the Board, found, as they might well have done, that certain evidence was sufficient only to sustain a finding of guilt on any or all the charges, excluding the charge of insubordination, then the plaintiff could not have been discharged under the Navy Department's own regulations. This conduct on the part of the Agency was a violation of the procedure as established by Title 5, Section 652, U.S.C.A., as it is arbitrary, capricious and an abuse of discretion and otherwise not in accordance with the law.

10. The letter of May 12, 1951, referred to in paragraph 5 and the language of that letter as set out in paragraph 5 is couched in such general terms that it was impossible for plaintiff to know on what evidence the decision was based and on which charge he was being dismissed. Therefore, he could not know if he was being

discharged for the one and only charge that under the Navy Department's regulations provided for dismissal on first warning. Plaintiff was thereby deprived of his employment without due process of law, and contrary to his Constitutional rights, abuses, privileges or immunities, and therefore, such action was in violation of Title 5, Section 652, U.S.C.A.

11. The plaintiff further alleges that not under any circumstances could he have been lawfully discharged; because even if the decision, as reported in the letter referred to in paragraph 5, had clearly set out that it had been found that the one charge that the plaintiff could have lawfully been discharged on, i.e., insubordination, was sustained by the evidence; such a finding would be set aside by this Honorable Court because under Title 5, Section 652, U.S.C.A., this charge would be unsupported by substantial evidence or any evidence. The evidence submitted in form of testimony of persons in a supervisory capacity and all evidence touching on the charge of insubordination in no manner substantiates the charge of insubordination.

29 12. The real cause of the discharge of the plaintiff was the result of a personal disagreement between a supervisor or supervisors and the plaintiff, not anyway related to the employment or not anyway affecting the Agency. Therefore, Title #5, Section 652, U.S.C.A. was used by the defendant as a subterfuge to unjustifiably discharge the plaintiff.

WHEREUPON? the premises considered, the plaintiff prays this Honorable Court to hold unlawful and set aside this Agency's action, findings and conclusions, and

for such other and further relief as to the Court may seem meet and proper.

/s/ Andrew J. Easter
Andrew J. Easter

/s/ Wesley E. McDonald
Wesley E. McDonald
Attorney for Plaintiff
602 Arlington Building
Washington, D. C. DI 7 9140

/s/ Austin Newton
Austin Newton
Attorney for Plaintiff
602 Arlington Building
Washington, D. C. DI 7 9140

Andrew J. Easter, being duly sworn on oath, deposes and says that he has read the foregoing amended complaint by him subscribed, that he knows the contents thereof, and that the matters and things therein stated he verily believes to be true.

/s/ Andrew J. Easter
Andrew J. Easter

Subscribed and sworn to before me this 10 day of March, 1954.

/s/ Harry P Motter
Notary Public

My Commission Expires, First Monday in January 1960

HARRY P. MOTTER
Alderman 13th. Ward
1925 DERRY ST.,
HARRISBURG, PA.

• • • •

34 Filed July 8, 1954

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1174-54

ANDREW J. EASTER

Plaintiff

v.

ROBERT B. ANDREWS
Secretary of Navy

Defendant

MOTION TO SUBSTITUTE PARTY DEFENDANT

Comes now the plaintiff, Andrew J. Easter, by and through his attorney, Wesley E. McDonald, and moves this Honorable Court to substitute Charles S. Thomas, Secretary of the Navy, as defendant in this cause in place of the party Robert B. Andrews; the plaintiff says that when this cause was filed Robert B. Andrews was then serving as Secretary of the Navy, but within the past six months he has resigned from that office and Charles S. Thomas has been appointed by the President to replace the said Robert B. Andrews as Secretary of the Navy.

/s/ Wesley E. McDonald
Wesley E. McDonald
Attorney for Plaintiff
1025 Vermont Avenue, N. W.
Washington, D. C.

POINTS AND AUTHORITIES IN SUPPORT OF MOTION

Rule 25(d), Federal Rules of Civil Procedure

/s/ Wesley E. McDonald
Wesley E. McDonald

This is to certify that a copy of the foregoing motion and points and authorities in support of motion was mailed, postage prepaid, this 2nd day of July, 1954, to the Assistant United States Attorney at his office address, United States District Court House, Washington, D. C.

/s/ Wesley E. McDonald
Wesley E. McDonald

• • • •

35 Filed JUL 8 1954 Harry M. Hull, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1174-54

ANDREW J. EASTER

Plaintiff

v.

ROBERT B. ANDREWS
Secretary of Navy

Defendant

ORDER SUBSTITUTING PARTY DEFENDANT

The motion of the plaintiff to substitute party defendant having come on for determination at this term of Court, and it appearing to the Court that Robert B. Andrews, the defendant in this cause, is no longer serving as Secretary of Navy, and he ceased to hold that office within the past six months, and his successor is Charles S. Thomas, it is by the Court, this 8th day of July, 1954,

ORDERED, that the plaintiff's motion to substitute Charles S. Thomas as defendant for Robert B. Andrews

in the above entitled cause be and the same is hereby granted.

/s/ Alexander Holtzoff
JUDGE

Consent:
Frank H. Strickler
Asst. U. S. Attorney

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Filed Sept. 27, 1954 Harry M. Hull, Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1174-54

ANDREW J. EASTER,
Plaintiff

v.

CHARLES S. THOMAS,
Secretary of the Navy,
Defendant

ANSWER

First Defense

The complaint fails to state a claim upon which relief may be granted.

Second Defense

The subject matter of the complaint is barred by the doctrine of laches.

Third Defense

Answering the numbered paragraphs of the complaint, defendant avers:

1. He is not required to answer the allegations contained in paragraph 1 of the complaint.

2. It is admitted that plaintiff has been an employee of the Department of the Navy for twelve years. The remaining allegations of paragraph 2 of the complaint are denied.

3. Admitted.

4. Admitted.

5. Admitted.

6. The allegations of paragraph 6 of the complaint are admitted except for that allegation contained in the last sentence, which is denied.
51

7. Admitted.

8. Defendant admits that the charges enumerated in paragraph 6 of the complaint are dealt with in the instructions referred to in paragraph 7. The remaining allegations of paragraph 8 are denied.

9. Defendant admits that there was a protracted hearing and that plaintiff was not furnished with findings of fact. The remaining allegations of paragraph 9 of the complaint are denied.

10. Denied.

11. Denied.

WHEREFORE, defendant demands judgment together with the costs of this suit.

/s/ Leo A. Rover
LEO A. ROVER
United States Attorney

/s/ Oliver Gasch
OLIVER GASCH
Assistant United States Attorney

/s/ Frank H. Strickler
FRANK H. STRICKLER
Assistant United States Attorney

/s/ George E. Hamilton
GEORGE E. HAMILTON
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Answer was made upon plaintiff by mailing a copy thereof to his attorneys, Wesley E. McDonald and Austin Newton, Esquires, 602 Arlington Building, Washington, D. C. this 27th day of September, 1954.

/s/ George E. Hamilton
GEORGE E. HAMILTON
Assistant United States Attorney

52 Feb. 8, 1956

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1174-54

ANDREW J. EASTER,
Plaintiff

v.

CHARLES S. THOMAS,
Secretary of the Navy,
Defendant

MOTION FOR SUMMARY JUDGMENT

Comes now the defendant by his attorney, the United States Attorney, and moves this Court for summary judgment herein for the reason that there is no genuine issue of material fact, and defendant is entitled to judgment as a matter of law. Attached to this motion and made a part thereof are Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.

/s/ Leo A. Rover
LEO A. ROVER
United States Attorney

/s/ Oliver Gasch
OLIVER GASCH
Assistant United States Attorney

/s/ Frank H.Strickler
FRANK H. STRICKLER
Assistant United States Attorney

/s/ Kitty Blair Frank
KITTY BLAIR FRANK
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Motion for Summary Judgment, Exhibits 1 thru 10, and Memorandum of Points and Authorities in support thereof, has been made upon plaintiff by mailing a copy thereof to his attorneys, Wesley E. McDonald and Austin Newton, 602 Arlington Building, Washington, D. C., this — day of February, 1956.

/s/ Kitty Blair Frank
KITTY BLAIR FRANK
Assistant United States
Attorney

EXHIBIT 2

LL/EASTER/A.J.
26 March 1951

To: Andrew J. Easter, Code 444
Subj: Removal

1. The Bureau is at present considering termination of your employment for cause.

2. The specific charges against you are: (1) Unsatisfactory performance (2) Insubordination (3) Disrespectful attitude toward supervision (4) Unreliable attendance and (5) your lack of interest in your work and the overall affect of your expressions upon the morale of other employees.

3. Upon your assignment to the Stability Section in 1946, you were informed by memorandum that certain knowledge was necessary to perform your assigned duties and you were further advised how that knowledge might be obtained. However, to the present date you have acquired so little of the knowledge specified, that you must be assigned routine tasks and cannot be relied upon to satisfactorily complete a task within a reasonable time commensurate with your grade and salary.

4. Your insubordinate and disrespectful attitude toward your supervision has apparently continued for some time. Corrections of errors in your work have resulted in lengthy, heated, time consuming arguments with your supervisors, during which you have frequently, openly and loudly accused them of incapability. On other occasions you have refused to put forth a special effort to meet work deadlines on the claim that your special efforts in the past went unrewarded. You have refused to make modifications on assigned work on the claim that the work should have been assigned correctly in the first place even though it was explainted to you that later developments required that modifications be made. Discussions with your supervisors regarding your attitude have resulted on many occasions in threats made by you of law suits, appeals and physical violence.

5. You are frequently absent from your desk without permission for long periods of time. From information received through various sources, it appears much of this time is spent merely visiting other sections of the Bureau to talk to other employees of your grievances against the Bureau and its personnel and to air your personal troubles. You have left business discussions in your own section to pursue this activity of yours. You have frequently spent periods of time away from the building without permission. You apparently consider that your own personal matters take priority over your work assignments. It is considered that your lack of interest in your work and your penchant to speak adversely of the Bureau and its supervisors have a detrimental effect on other employees particularly those unacquainted with the full situation.

6. In January 1951, upon being informed by your supervisor that you would be given an "Unsatisfactory" Performance Rating unless improvement was shown, you defiantly informed him that you were not making any effort to perform satisfactorily, had no intention of improving and that you hoped that the "Unsatisfactory" rating would bring to a "head" a matter with which you were concerned.

Such attitude on the part of any employee cannot be condonned.

7. You have the privilege of replying in writing within five (5) days of the date of these charges to show cause as to why your services should not be terminated and to request a hearing if you so desire. If you desire a hearing, you may be represented by any person of your choice and you may bring witnesses who have a direct knowledge of the circumstances resulting in the preferral of those charges.

8. Your reply must be in writing and must be received in Code 263 on or before close of business 2 April 1951. Failure to reply or an unsatisfactory reply will result in your termination for cause, effective close of business 10 April 1951.

H. N. Wallin
Chief of Bureau

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66 EXHIBIT 4

Filed Feb. 8, 1956

FORMAL ANSWER TO LETTER DATED MARCH 26, 1951, FROM THE BUREAU OF SHIPS, NAVY DEPARTMENT, TO ANDREW JOHNSON EASTER, CODE 444, SUBJECT, REMOVAL

Now comes your employee, Andrew Johnson Easter, and by way of answer to the allegations and charges contained in the letter of March 26, 1951, directed to him by the Bureau of Ships, Navy Department, says:

1. *UNSATISFACTORY PERFORMANCE*

(a) Job Description

Under General supervision with considerable latitude for the exercise of independent judgment in determining methods to be employed, but respon-

sible for the technical accuracy of results and correctness of methods employed:

Makes stability calculations in connection with Naval surface vessels which involve computations based upon inclining experiment data; specifically, reviews inclining experiment data for both accuracy of results and satisfactory conditions; determines effect of alterations to surface vessels on stability and displacement and investigates and suggests corrective measures.

At no time was any project or assignment of work made either written or orally under the above description.

Employee had had experience in working independently on assigned projects and work.

Employee is not qualified through lack of previous experience, training or opportunities to make calculations in connection with Naval surface vessels which involve computations based upon "Inclining Experiment Data", etc., as set forth in the job description hereinabove described and as delineated in memorandum of 6 May 1946, because as shown in organization memorandum No. 444-102-48, 5 March 1948, employee was and has been assigned to Code 444A, scientific, whereas memorandum referred to in paragraph 3 of the Chief of Bureau of Ship's letter of recent date and enclosure (A) referred to in memorandum, pertain to work assigned to Code 444B and 444C.

67 Employee denies that part of paragraph 3 having to do with his acquisition of knowledge, the assignment only to routine tasks and his failure to satisfactorily complete a task within a reasonable time commensurate with his grade and salary. In answer to these allegations employee states during his assignment to his present employment he has satisfactorily completed with commendation a number of specific assignments of all the various types of work produced and performed by

the Stability Section, 444A Scientific, which work was of the same type assigned to other employees with higher grades.

With respect to the allegation of assignments to only routine work, employee respectfully states that since being assigned to his present position in 1946 he has completed eight Stability model plan assignments, consisting of the following: (1) BB 61 Battleship; (2) CL 55 Light Cruiser; (3) CLC 1 Task Fleet Command Ship; (4) DE (TE) Escort Vessel; (5) *DD 927 Destroyer; (6) AM 57 Mine Sweeper; (7) ASW Anti Submarine; (8) CA 134 Heavy Cruiser. During the same period of time when the above was completed a total of approximately twelve projects of this type were completed in the Stability Section, which consists of ten employees. On these assignments he established a procedure which caused the work to proceed in an orderly manner.

At present he has a professional rating of GS-12 on the U. S. Civil Service Commission, 1946 Register. He made calculations and stability curves for intact and damaged stability characteristics for the LSD, Landing Ship, Dock, AGC Amphibious Force, Flag Ship, Aux., CA 1 34 Heavy Cruisers, CLC 1 Task Fleet Command Ship, CVE 105 Aircraft Carrier Escort, AO 6 Oil Tankers, Aux. He has prepared curve of form and cross curves of stability for BB 61 Battleship, ARS 38 Salvage Vessel, AV 4 Seaplane Tender, YMS 1 Mine Sweeper. Trim and "V" lines for CL 144 Light Cruiser, CVE 105 Aircraft Carrier, Escort, Bon jean curves for PCE Patrol vessels, and extent of damage study for CAV 50 Aircraft Carrier, heavy. *Compiled data from model test for CV9 Aircraft Carrier, heavy, CVE 105 Aircraft Carrier, Escort, which assignments were time consuming. *Made Monograph and cross curves for CVL 48 Aircraft
68 Carrier, small. All assignments were completed within a reasonable time. His efficiency rating for 1950 specified plus for completion of work.

•Assignments completed in 1950, including the following: Cross Curves for Upper deck, Super structure omitted, AO 41, Drawing of critical flooding from one and two torpedo hits and curves of statical stability from the CV 9 Model test, DD 692 Model Tests compared with calculations.

Checked intact integrations of Main to Poop decks AO 6. Drew large reproduction of Fig. I-7-9 for Commander Hausman for lecture criteria for intact, damaged and topside weights. Drew water and buttock lines on model for class use. Drew specific curve from inclining experiment.

2. *INSUBORDINATION AND DISRESPECTFUL ATTITUDE TOWARD SUPERVISION.*

This probably refers to the following instance. He had prepared a model plan of DD 927. Similar plans were marked "restricted" for security reasons. The supervisor and checker made five changes in the plans after same had been checked and reviewed. The changes were due partly to indecision. The requested changes were made, then he was instructed by the supervisor through the checker to remove the security block. This he refused to do due to the fact that in his opinion the plan should have been protected by security markings, and the repeated changes tended to demoralize him. His efficiency rating sheet for 1950 shows plus for cooperativeness.

3. *UNRELIABLE ATTENDANCE*

His leave record for this rating period is as follows: Annual—14 days, 4 hours

(a) 6 days, 6 hours, for preparation of and court proceedings.

(b) 3 days, 5 hours, Interaal Revenue consultations.

69 (c) 4 Hours for advancing idea pertaining to ship.

(d) 3 days, 6 hours, for personal matters.

Sick Leave—16 days. (9 used since December 27, 1950, after the first 90-day warning notice).

4. *ABSENCE FROM DESK.*

During this rating period at no time has he had brought to his attention the fact that he was away from his desk for unusual lengths of time. Usually when he was absent from his desk he was on government business. With respect to his criticism of his supervisors he has expressed his opinion of their personalities, ability and administration. This has been to other employees and supervisors who have concurred in his opinion. His expressions were his opinion but were not used with contemplated malice. The supervisors are over-sensitive when confronted with criticism.

These type of supervisors have tended to demoralize the employees under them because of their lack of ability, etc., and in most cases are inferior to the Engineers they supervise and administer.

In December 27, 1950 and January 11, 1951, on being informed by the supervisor that he would be given a non-satisfactory performance rating, the employee refused to initial the written notice as protest and objection to the notice, which notice he considered unwarranted and especially that he had never been informed or had there been any indication that his services were not satisfactory and that there was no warning as required by NCPI 5-1 as follows:

> NCPI 5-1. THE WARNING.—The performance rating of 1950 provides that no employee shall be rated unsatisfactory without a ninety-day prior warning and a reasonable opportunity to demonstrate satisfactory performance. The regulations of the Civil Service Commission prohibit the rating of performance as deficient with regard to any work requirement that was not known by the employee or which the employee had not been given a fair opportunity to meet. Before giving a warning for unsatisfactory

work performance, an examination should be made to determine the cause of the unsatisfactory performance, and corrective action taken, whenever possible. Should corrective action fail to improve performance sufficiently or should the taking of corrective action be impractical, the immediate or higher supervisor will give the employee the warning, in writing.

His previous rating had been very good, and in his estimation work performed by him in this year was of the same caliber and volume which had been performed during the previous year. It is also to be noted that on October 18, 1950, the employee had filed a request for rehearing on 1945 and 1946 efficiency ratings before the Navy Department Board of Review and had filed a grievance appeal, Fourth Stage, in the Navy Department, and had re-presented his all purpose combat carrier to Vice-Admiral Cochrane at the 440 Forum, 7 December 1950 which was returned 26 December 1950.

The detailed criticisms made of the employee on January 11, 1951, Notice of Warning, are very general and difficult to analyze. Under adaptability are set up the following:

Lack of willingness to learn.

To start work on time.

To spend a reasonable amount of time in the office.

To concentrate on the job.

This is a repetition of one item set out under quantity of work in the same letter. The volume of work performed by the employee compares favorably with other employees in the office. It has been necessary for the employee to learn specific methods of calculation to perform the duties of his position. Also in this letter there is a criticism that he fails to get along with fellow workers, and fails to maintain harmonious relations in the office. In this respect no particular unfriendliness exists between the employee and his fellow employees. He has

not disrupted the office but has attempted to cooperate in a manner which would lend toward harmonious operations. He is accused of a lack of enthusiasm and a tendency to waste time and to reduce general morale of others, which he denies, and states that the allegation in paragraph 6 is absolutely untrue.

71 If there were any lengthy, heated or time consuming arguments in reference to any corrections of errors in the employee's work the arguments were among the checkers and the supervisors due to indecisions, which has made it necessary for the employees to require the supervisor to delineate his desires in a written job write-up. Employee disregards other statements in paragraph 4 as untrue and that there were no developments that could affect incorrect assignments except indecisions and that periods of time away from the building were very rare and in every case accounted for.

He has *not* been accorded the privileges of the training courses set up by the Bureau nor opportunities to travel to other agencies in constructing or testing experimental models of which he has prepared plans for the major part thereof.

His supervisors have stated that he would never receive a promotion in his section nor would he receive a promotion until after the supervisors have been advanced. All the other employees were promoted beyond him except one who had received about four grade increases during the employment of your employee in this office, which increases were in proper order and deserving.

The employee has long since been at the top of grade GS-9, although he had formerly held a P-4 in the Conversion Section for a period of four years, and is now on the Civil Service Register as GS-12, as stated before.

Your respondent feels that the removal notice and the allegations contained therein are without foundation of fact and are not substantiated by his employment record.

For the reasons set forth in his answer he respectfully requests that the same be withdrawn. If the Bureau of Ships, Department of Navy, should decide that the herein answer is unsatisfactory then a formal hearing is requested.

Respectfully submitted,

/s/ Andrew J. Easter
Andrew J. Easter

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EXHIBIT 6

LL/Easter, A.J.
12 May 1951

From: Chief, Bureau of Ships
To: Mr. Andrew J. Easter
Subj: Removal
Ref: (a) BuShips ltr of 26 Mar 1951 to A. J. Easter
(b) A. J. Easter ltr of 2 Apr 1951 to Chief, BuShips

1. By reference (a) you were notified of the proposed action to terminate your employment for cause. By reference (b) you replied to the charges contained in reference (a) and requested a hearing. A hearing was granted, a board was appointed by me to hold the hearing and make recommendations to me and hearings were held on 5, 9, 10, 17 and 18 April 1951. I have considered all of the facts presented in your case and hereby notify you that you will be removed for cause effective close of business 14 May 1951.

2. You may continue in an active duty status until that time provided your conduct and performance permit.

3. You have the right to appeal this action to the Under Secretary of the Navy via the Chief, Bureau of Ships within ten (10) days from this date.

H. N. Wallin,
Chief of Bureau

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EXHIBIT 9

28 Nov 1951

My Dear Mr. Easter:

This is in reply to your appeal from removal action taken by the Bureau of Ships and is the final action in connection with your appeal. The entire record in connection with your case has been carefully reviewed and considered. Each of the charges is supported by competent evidence, both documentary and oral, and it is clearly established that the penalty of removal is appropriate. Your appeal, therefore, is denied.

Very truly yours,

Francis P. Whitehair
Under Secretary of the Navy

Mr. Andred Johnson Easter
c/o Wesley E. McDonald
Attorney-at-law
921 Colorado Building
Washington, D. C.
Copy to:
LCDR Rappelt, Rm. 4E 669 Pentagon
OIR 162
Prepared by:
L. Neal Ellis, OIR 105
Rm. 255 Pent. Annex No. 1
Ext. 54083
23 Nov 1951

130 Filed April 18, 1956 Harry M. Hull, Clerk

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OBJECTIONS TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, AND PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

Comes now the plaintiff, by his attorney, Austin Newton, and files objections to the defendant's motion for summary judgment, and moves this Honorable Court to grant summary judgment in behalf of the plaintiff, for the reasons set forth in the memorandum attached hereto, the Exhibits A and B filed herewith, as well as the exhibits filed with defendant's motions.

/s/ Austin Newton
AUSTIN NEWTON
Attorney for the Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Motion for Summary Judgment, Exhibits A and B, and Memorandum of Points and Authorities in support thereof, has been made upon defendant by mailing a copy thereof to Kitty Blair Frank, Assistant United States Attorney, U. S. Courthouse, Washington, D. C., this 18 day of April, 1956.

/s/ Austin Newton
AUSTIN NEWTON
Attorney for the Plaintiff

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Filed April 18, 1956 Harry M. Hull, Clerk

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MEMORANDUM OF POINTS AND AUTHORITIES IN OBJECTION TO DEFENDANT'S MOTION FOR SUMMARY JUDGENT, AND IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff's claim for relief sought here is based on an illegal discharge from his Civil Service position and the denial of his appeal, within the agency, said denial being rendered on November 28, 1951.

ARGUMENT

I

Plaintiff's claim is not barred by Laches

Although plaintiff's counsel diligently attempted to secure an answer or other appropriate responsive pleading to the complaint filed in this cause, on March 25, 1952, Civil Action No. 1307-52 (Exhibit A), for unexplained reasons, the government did not file such a pleading until July, 1952, when a motion almost identical to the one now before the Court was filed. That motion was ruled on by this Court on October 15, 1952. While the defendant's present motion would lead the Court to believe that the sum and substance of the action taken by the Court on that motion was to require the plaintiff to file an amended complaint, this was merely incidental to the Court's ruling, which was to deny the defendant's motion, in most emphatic terms (Official transcript on argument on motion, October 15, 1952). More important still is the fact that the answer to plaintiff's complaint (said complaint having been filed on March 25, 1952) was not filed until April 7, 1953. More than one year elapsed between the filing of the complaint and the ans-

wer thereto. Thus it clearly appears that the great portion of time between the illegal discharge and the time of the filing of the present complaint was due entirely to the inactivity of the defendant.

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Another very misleading statement appearing in defendant's motion is found on page 2, and reads:

"It was the Government's motion that the dismissal on the grounds of abatement was granted."

Affidavit of plaintiff's counsel, filed herewith, clearly shows that the Government filed the motion on the suggestion of said counsel when he discovered the failure to substitute parties, and that he told counsel for the Government that he would file no objections so the complaint could be declared abated, and the present action filed. When defendant's motion was granted, plaintiff forthwith filed this complaint. So, while the defendant says in its motion that the plaintiff took no action from the time the first complaint was filed until the filing of the present complaint, it in truth appears that it was the Government who took no action until plaintiff's counsel suggested that the first complaint should be dismissed in order that the present complaint could be filed.

Because of the facts setforth above, and because the doctrine of latches is an equitable doctrine, the defendant's points and authorities on the question of Lashes become totally inoperative. Never was there a more classical case where the maxim,

"He who seeks equity must do equity" and "He who comes into equity must come with clean hands"

demands application. For it is elementary that these doctrines signify that a litigent will not be heard to claim equity where his own conduct has been inequitable. National Fire Insurance Company v. Thompson 281 U.S. 331

The Government is asking the Court to declare the plaintiff guilty of Laches for failure to substitute parties, when for the greater period of that time, the Government had not even filed an answer to the complaint.

It should be particularly noted that the very wording of Rule 25(b) the Federal Rules of Civil Procedure by abating the action on failure to substitute makes it clear that had Congress intended this failure to be the end of the cause of action, then failure to substitute would have been made a barr and not an abatement.

Moreover, the case of Snyder v. Buck 340 U.S. 15 specifically grants the party whose suit has abated the right to start over when there has been a failure to substitute.

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Nor can the defendant claim that the failure to substitute has been detrimental to the Government, because the affidavit of the plaintiff's counsel clearly shows that for the greater part of the period in question, the plaintiff has been employed at a salary greater than that he received as a government employee.

A STATUTORY RIGHT OF THE PLAINTIFF HAS BEEN DENIED

The Government's position taken in defendant's motion, that no such right has been denied, has been passed upon in this Court in this very matter, through Judge Luther Youngdahl. When the Government argued a previous motion almost identical to the one now before the Court, Judge Youngdahl ruled:

". . . it seems to me a fundamental requisite in the due process of law and fair hearing that an individual is entitled to be informed as to what specific charges he is being

removed under because it might make some difference if he wants to take the case up on review as to what charges the Government sustained . . ."

It is vital to note that not only has the Government once submitted the same question to the Court on Mr. Easter's discharge, but their previous motion was supported with substantially the same exhibits, affdavits and authorities and despite the fact that the Court emphatically denied the motion, it is now being submitted again.

The Government's motion on the jurisdictional question began by admitting that the Court does have jurisdiction in cases where the Federal employee was dismissed, contrary to statutory requirements.

As was stated by our Court of Appeals in the case of Powell v. Brannan, 91 U. S. Appeals D. C. 16, judicial relief is available when these statutory procedures have been departed from,

"When there has been a substantial departure from applicable procedures, a misconstruction of government legislation, or like error going to the heart of the administrative determination, a measure of judicial relief may, on occasion be obtainable."

Also see Deak v. Pace 88 U. S. App. D. C. 50.

134 The defendant's theory in this matter can be clearly understood by a reading of Page #4, App. of the Government's motion, beginning with paragraph #6, and continuing through that page. There, the Government poses the question, "What are the procedures required by the act?" Then the question is answered by saying a notice in writing is required, a copy of the charges, and a reasonable time to file a written answer. (Actually, there is more in the actual wording of the statute than these requirements, but for the point being made, these setforth are sufficient.) Then, the Government says that the exhibits show that these things were done. To

state it another way, the Government is saying that if the particular agency goes through this form, the discharged employee cannot under any circumstances have recourse to the Court, or that the statute is one of form, and not of substance, because under this theory, the particular officers concerned could trump up any false charges to discharge an employee, for purely personal reasons, and then follow the form, and say the discharged employee was without judicial relief.

Although such a contention reduces the statute to a fallacy, it is the position the government has taken in this case from the beginning, and the one that Judge Youngdahl stated was not correct in the discharge of this employee.

The most important point in this case is the one which the defendant's motion says is being raised for the first time, but which the record shows was the very contention upon which Judge Youngdahl denied the previous motion for summary judgment, namely, the fact that the Agency, in discharging the plaintiff, merely informed him that he was being removed without telling him which of the many charges against him had been sustained, (See Exhibit #6, defendant's motion), thereby denying him the opportunity to intelligently or fairly prepare for his appeal within the agency procedure. The Government's claim that this was not the case is erroneous. One need only to note the Exhibits filed in the plaintiff's motion and the transcript of the motion argued before Judge Youngdahl to ascertain this fact.

Exhibit #2 shows the many charges that were hurled against the plaintiff. Exhibit #10, Pages 29 through 36, shows the range of penalties for the charges. Penalties vary according to the graveness of the charge, and the number of times the charge has been made. There-
135 fore, it would be impossible to prepare an appeal, and the discharged employee here was forced to file

what purported to be an appeal, but which, for the fact that he did not know what charges had actually been sustained against him, really could amount only to a general prayer for relief to the Under-Secretary of the Navy. This is the reason Judge Youngdahl asked the government counsel the following question when this motion was being argued in Civil Action No. 1307-52:

"• • •THE COURT: Don't you think, as long as the Government provided specific charges, and that after you indicated to him what charges—

MR. STRICKLER: I think it might be advisable, Your Honor, but not required under the statute. I say that by referring to the code itself.

THE COURT: Just on the basis of the code?

MR. STRICKLER: I say it would be advisable.

THE COURT: How does he expect to come into Court and raise a defense on a general statement? He doesn't know what it is. A charge of insubordination requires an entirely different charge than these other charges. It seems to me that as a basis for an adequate hearing the Government should indicate on what basis he is being discharged.

MR. STRICKLER: As I say, if I were giving advice to the agency on which charge, I would say yes, but counsel has stated to the Court that there was a frame-up, and that they had merged all charges to get rid of him. If that is true, Your Honor, this Court has no power, no jurisdiction or authority to inquire into his guilt or innocence.

THE COURT: Unless that should fit into the pattern of arbitrary action, and it should appear in addition that the action was not in accord with the rule, that would be corroborating testimony. • • •"

Furthermore, it is clear that Judge Youngdahl understood that this was not adequate notice within the contemplation of the statute when he said, on page three of the partial transcript:

• • • there would be a serious question in my mind whether this is adequate notice, even in the statement, that might not indicate arbitrary action on the part of the Government. • • •

Finally, the plaintiff submits, not to be repititous, but for point of emphasis, what Judge Youngdahl said in ruling upon the motion of the government on October 15, 1952:

"THE COURT: Will you read that letter for me counsel? What is the nature of that?

MR. STRICKLER: It reads:

136 'By reference (a) you were notified of the proposed action to terminate your employment for cause. By reference (b) you replied to the charges contained in reference (a) and requested a hearing. A hearing was granted, a board was appointed by me to hold the hearing and make recommendations to me and hearings were held on 5, 9, 10, 17 and 18 April, 1951. I have considered all of the facts presented in your case and hereby notify you that you will be removed for cause effective close of business 14 May 1951.'

THE COURT: That is what I had in mind. It seems to me a fundamental requisite in the due process of law and fair hearing that an individual is entitled to be informed as to what specific charges he is being removed under because it might make some difference if he wants to take the case up on review as to what charges the Government sustained. I think under all the circumstances in a case of this nature the Court should not grant summary judgment, but should let it go to trial.

You may draw an Order."

In conclusion the plaintiff respectfully submits that the government's motion was properly denied before, and at that time the Court pointed out where the government had

failed in properly discharging the plaintiff according to law, and for this reason it is urged that the plaintiff's cross-motion for summary judgment should be granted.

Respectfully submitted,

/s/ B. Austin Newton, Jr.
B. Austin Newton, Jr.
Attorney for Plaintiff
1025 Vermont Avenue, N. W.
Washington, D. C.

137 Filed Apr. 18, 1956

AFFIDAVIT

DISTRICT OF COLUMBIA

Comes now the plaintiff, Andrew J. Easter, and under oath deposes and says that on March 26, 1951, he was furnished a letter with five different charges as grounds for his discharge from his Civil Service Position with the Department of Navy. The Affiant says that there was not one scintilla of truth in these charges and that they were made as a subterfuge for the resentment that developed on the part of certain of the plaintiff's superior over an invention.

That although an answer to these charges was promptly filed and further answer was made at an oral hearing, the Chief of the Bureau of Ships without any evidence being offered to support these charges, and without giving one particular of credence or consideration to the answer of the affiant, on May 12, 1951 notified the affiant, "——. I have considered all the facts presented in your case and hereby notify you that you will be removed for cause effective close of business 14 May 1951. ——"

The affiant says that when he received the charges referred to above it was the first action taken against him

under the Navy Civilian Personnel Manuel. He further says that the action taken was unlawful in that the said manuel calls for a different procedure than that which was followed and from that which is required by law.

/s/ ANDREW J. EASTER
ANDREW J. EASTER

Subscribed and sworn to before me this 9 day of April 1956.

/s/ ELIZABETH B. WELCH
Notary Public

138 Filed Apr. 18, 1956

• • • •

AFFIDAVIT

DISTRICT OF COLUMBIA) ss:

Comes now B. Austin Newton, Jr., attorney for plaintiff, and under oath deposes and says that on March 25, 1952, he, with co-counsel, filed an action in this Court entitled Andrew J. Easter v. Dan A. Kimball, Secretary of Navy, Civil Action No. 1307-52; that from March 25, 1952, until July of 1952, the affiant talked to government counsel on many occasions urging them to file an appropriate pleading in answer to the complaint, and since such a pleading was not filed he informed counsel for the defendant that he would, of necessity, file a motion to compel an answer, and such a motion was prepared. On notifying government counsel that such a motion would be filed, and served, he was told that a motion for summary judgment was being prepared and would be filed forthwith. This motion was filed in July, 1952, and came on to be heard on October 15, 1952, at which time the government's motion was denied, but the plaintiff was instructed to file an amended complaint. The amended complaint was filed within the time specified but again

Standard Form No. 81
August 1946
U. S. CIVIL SERVICE COMMISSION

Form approved.
Budget Bureau No. 50-R012.2.

REPORT OF EFFICIENCY RATING

ADMINISTRATIVE-UNOFFICIAL ( )
OFFICIAL:
REGULAR (X) SPECIAL ( )
PROBATIONAL ( )

As of 3-31-50 based on performance during period from 4-1-49 to 3-31-50

EASTER, Andrew J. (Name of employee)

Eng. Nav. Arch. (Title of position, service, and grade)

GS-9

SHIPS (Organization—indicate bureau, division, section, unit, field station)

CODE 444

ON LINES BELOW MARK EMPLOYEE
√ if adequate
− if weak
+ if outstanding

1. Study the instructions in the Rating Official's Guide, C. S. C. Form No. 3822A.
2. Underline the elements which are especially important in the position.
3. Rate only on elements pertinent to the position.
   a. Do not rate on elements in *italics* except for employees in administrative, supervisory, or planning positions.
   b. Rate administrative, supervisory, and planning functions on elements in *italics*.

CHECK ONE:
Administrative, supervisory, or planning ..... ☐
All others ..... ☑

__ (1) Maintenance of equipment, tools, instruments.
___ (2) Mechanical skill.
√ (3) Skill in the application of techniques and procedures.
√ (4) Presentability of work (appropriateness of arrangement and appearance of work).
√ (5) Attention to broad phases of assignments.
+ (6) Attention to pertinent detail.
___ (7) Accuracy of operations.
√ (8) Accuracy of final results.
√ (9) Accuracy of judgments or decisions.
√ (10) Effectiveness in presenting ideas or facts.
√ (11) Industry.
+ (12) Rate of progress on or completion of assignments.
___ (13) Amount of acceptable work produced. (Is mark based on production records? .....) (Yes or no)
___ (14) Ability to organize his work.
√ (15) Effectiveness in meeting and dealing with others.
+ (16) Cooperativeness.
√ (17) Initiative.
√ (18) Resourcefulness.
√ (19) Dependability. (Attendance not considered)
___ (20) Physical fitness for the work.

___ (21) *Effectiveness in planning broad programs.*
___ (22) *Effectiveness in adapting the work program to broader or related programs.*
___ (23) *Effectiveness in devising procedures.*
___ (24) *Effectiveness in laying out work and establishing standards of performance for subordinates.*
___ (25) *Effectiveness in directing, reviewing, and checking the work of subordinates.*
___ (26) *Effectiveness in instructing, training, and developing subordinates in the work.*
___ (27) *Effectiveness in promoting high working morale.*
___ (28) *Effectiveness in determining space, personnel, and equipment needs.*
___ (29) *Effectiveness in setting and obtaining adherence to time limits and deadlines.*
___ (30) *Ability to make decisions.*
___ (31) *Effectiveness in delegating clearly defined authority to act.*

STATE ANY OTHER ELEMENTS CONSIDERED

___ (A) .....
___ (B) .....
___ (C) .....

(1) Maintenance of equipment, tools, instruments.
(2) Mechanical skill.
(3) Skill in the application of techniques and procedures.
(4) Presentability of work (appropriateness of arrangement and appearance of work).
(5) Attention to broad phases of assignments.
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(29) *Effectiveness in setting and obtaining adherence to time limits and deadlines.*
(30) *Ability to make decisions.*
(31) *Effectiveness in delegating clearly defined authority to act.*
STATE ANY OTHER ELEMENTS CONSIDERED
(A) .....
(B) .....
(C) .....

STANDARD Deviations must be explained on reverse side of this form	Adjective Rating
Plus marks on all underlined elements, and check marks or better on all other elements rated	Excellent
Check marks or better on all elements rated, and plus marks on at least half of the underlined elements	Very Good
Check marks or better on a majority of underlined elements, and all weak performance overcompensated by outstanding performance	Good
Check marks or better on a majority of underlined elements, and all weak performance not overcompensated by outstanding performance	Fair
Minus marks on at least half of the underlined elements	Unsatisfactory

Adjective Rating

Rating official .. V.G.

Reviewing official .. VG

Rated by Charles L. Wright Jr. (Signature of rating official) ENGINEER (Title) 12 APRIL, 1950 (Date)

Reviewed by Charles L. Moore (Signature of reviewing official) ENGINEER (Title) 13 APRIL 1950 (Date)

Rating approved by efficiency rating committee 28 MAY 1950 (Date) Report to employee VERY GOOD (Adjective rating)

Rating shown to employee L. L. W. (Initial) 4/13/50 (Date)

U. S. GOVERNMENT PRINTING OFFICE 16—80177-6

UNITED STATES CIVIL SERVICE COMMISSION

NOTICE OF RATING

APPLICANT MUST FILL IN ALL BLANKS DOWN TO HEAVY BLACK LINE

Exact title of examination	Date of examination
Engineer (Naval Architect)	1946

NAME Mr Andrew Johnson Easter

ADDRESS 6420 Belair Road
Baltimore 6, Md.

This is not a notice of appointment. It is a record of your rating. It is important that you keep it.

YOUR RATING IS:

[X] Eligible - Your numerical rating is

P-5 70.0
P-4 76.0

[ ] Your eligibility is suspended pending your furnishing the Commission proof of correction of physical condition, as shown or inclosed notice.

[ ] Ineligible - On written examination

[ ] Ineligible - You do not meet the minimum requirements as specified in the examination announcement

[ ] Ineligible -

If there is a check below, it indicates the amount of veteran preference credit included in your rating.

[ ] 5 points. - If you are appointed you will be required to furnish to the appointing officer evidence of honorable separation from the armed forces.

[ ] 10 points.

IMPORTANT MESSAGE TO ELIGIBLES

1. Your name has been placed on a list of persons who passed this examination. Your chances of being reached for consideration for appointment depend on (a) the number and kinds of positions in Federal agencies that have to be filled from the list, (b) the rating you made in the examination, (c) in some instances, your state of residence, and (d) the number of new eligibles added to the list as a result of privileges given by law to certain veterans to take late examinations. Therefore, no definite information can be given as to an eligible's prospects for appointment.

2. IT IS YOUR RESPONSIBILITY TO KEEP THE COMMISSION INFORMED OF ANY CHANGES IN YOUR ADDRESS OR IN THE CONDITIONS UNDER WHICH YOU WILL ACCEPT APPOINTMENT. SEND ANY NEW INFORMATION CONCERNING YOUR ADDRESS OR AVAILABILITY TO THE OFFICE WHOSE ADDRESS IS SHOWN BELOW AND REFER TO THE TITLE OF THE EXAMINATION AND THE RATING RECEIVED.

3. A competitor who makes a passing mark in a Civil Service examination may, under certain conditions, have his eligibility, and his examination papers, transferred from the register of one civil service office to a similar register in another civil service office. Such a competitor who wishes to have his eligibility transferred should send his request to the civil service office where he has eligibility. A determination will then be made, and the competitor will be notified, as to whether his eligibility can be transferred.

4. If you are certified by the Commission, your qualifications will be carefully considered by the appointing officer in the agency where the position exists. The agency appointing officer is entitled to consider for each appointment the highest three persons on the list of eligibles appropriate for the position to be filled, and may select any one of them to fill the position. If you are selected for appointment you will be notified by the agency.

5. If, when you are considered for appointment, you signify that you are not available or you fail to reply to a communication, your name will be removed from the register until you satisfactorily explain your reasons and specify the conditions under which you would be willing to accept appointment. When you are unable to accept any appointment you should request that your name be suspended from the register until you are again able to accept appointment. A request for the restoration of your name will be considered at any time while the register is still in use.

Issuing Officer and date of issue

If there is a check below, it indicates the amount of veteran preference credit included in your rating.

[ ] 5 points. - If you are appointed you will be required to furnish to the appointing officer evidence of honorable separation from the armed forces.

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CSC Form 4008
March 1947

no answer was filed to the complaint until April 7, 1953, over a year from the date the complaint was originally filed.

That during this long period of time when the case was inactive due to the fact no responsive pleading had been filed to the complaint, counsel inadvertently overlooked the necessity of substituting parties due to a change in the office of the Secretary of Navy.

/s/ B. Austin Newton, Jr.
B. Austin Newton, Jr.

Sworn and subscribed to before me this 18th day of April, 1956.

Harry M. Hull, *Clerk*
/s/ By Jay H. Warren,
Deputy Clerk

139 Filed Apr. 27, 1956

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SUPPLEMENTAL AFFIDAVIT

DISTRICT OF COLUMBIA) ss:

Comes now B. Austin Newton, Jr., attorney for the plaintiff, who under oath deposes and says that under date of April 18, 1956, he executed an affidavit in this cause, and at that time failed to set forth therein certain material statements. In order that these statements will be before the Court in the cross-motion for summary judgment now filed in this cause, he states as follows:

That in the course of time that Civil Action #1307-52 was pending before this Court the affiant discovered that there had been a failure to substitute parties as required by law, and he appeared before government counsel, namely, Mr. Frank Strickler, and called this fact to his attention. That after discussion with government coun-

sel it was agreed that a motion would be filed by such counsel to dismiss the cause, to which there would be no opposition by the plaintiff, in order that in the dismissal of Civil Action #1307-52 on the grounds it had abated, a new action could be filed. The affiant says that this was done.

The affiant further says that to his personal knowledge, since the plaintiff's dismissal from the Navy Department, he has been employed by large firms in the architectural field, and that he has drawn good salaries for such services. The affiant says that because of this the government has not been prejudiced by any failure to substitute parties as required by law since the plaintiff has been receiving remuneration for his services from private employment.

/s/ B. Austin Newton, Jr.
B. Austin Newton, Jr.

140 Sworn and subscribed to before me this 27th day of April, 1956.

Harry M. Hull, *Clerk*
/s/ By Doris C. Meece,
Deputy Clerk

Certificate of Service

A copy of the foregoing supplemental affidavit was served personally on Kitty Blair Frank, Assistant United States Attorney, D.C. Courthouse, Washington, D. C., attorney for the defendant, by leaving a copy of the same at her office address this 27th day of April, 1956.

/s/ B. Austin Newton, Jr.
B. Austin Newton, Jr.

143 Filed June 26, 1956

• • • •

ORDER

Upon consideration of the pleadings, affidavits and record of this Court in Civil Action No. 1307-52, filed herein, defendant's motion for summary judgment to which exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 13 have been attached hereto and made a part thereof, and plaintiff's cross-motion for summary judgment, it appearing to the Court that there exists no genuine issue of material fact, that plaintiff's removal was legal and valid, and that plaintiff's claim is barred by laches, and that the defendant is entitled to judgment as a matter of law, it is this 26th day of June, 1956,

ORDERED that defendant's motion for summary judgment be and the same is hereby granted, and it is

FURTHER ORDERED that plaintiff's cross-motion for summary judgment be and the same is hereby denied.

/s/ F. Dickenson Letts
Judge

Certificate of Service

I hereby certify that service of the foregoing Order was made upon plaintiff by mailing a copy thereof to his attorney, Paul L. O'Brien, 729 15th Street, Washington 5, D. C. this 25 day of June, 1956.

/s/ Kitty Blair Frank
Kitty Blair Frank
Assistant United States
Attorney, Attorney for
Defendant

145 Filed July 5, 1956

• • • •

MOTION TO SET ASIDE ORDER AND REINSTATE CAUSE

Now comes the plaintiff, Andrew J. Easter, and moves that this Court set aside the order granting the Defendant's Motion For Summary Judgment entered in this cause June 26, 1956, and to reinstate the case and says for reasons therefor:

1. The plaintiff has been an employee of the Department of the Navy for about fifteen years, in addition to other experience in private ship yards, one year in The Philadelphia Navy Yard, Philadelphia, Pa. as a Grade A draftsman on the conversion of a battle cruiser to an aircraft carrier in 1920, about one year in the Office of the Superintendent Constructor's Office, Philadelphia, Pa., as a Design Draftsman (Ship) in 1928, due to lack of work he was transferred to the Norfolk Navy Yard, Norfolk, Virginia, where he made the arrangement plans for the modernization of a battleship, and upon completion, resigned in 1929. January 16, 1939, the plaintiff was employed by the Bureau of Construction and Repair of the Navy Department War Plans Section, Washington, D. C., to prepare confidential contract plans for the conversion of merchant vessels to naval auxiliaries, etc. During his employment he made advancement and rendered outstanding services by reason of his efficiency ratings and particularly his record in the design
146 and production of plans, including a Beneficial Suggestion submitted about 1940, which was the basic principle for the design and conversion of a tanker to an Auxiliary Aircraft Carrier later known as the Baby Flat Top, by the Navy Department, and the Merchant Aircraft Carriers by the British Admiralty.

2. By virtue of a letter of May 12, 1951, the plaintiff was notified by Chief of Bureau of Ships, Department of Navy, that he would be removed for cause on May 14, 1951, which was appealed.

3. On November 28, 1951, by letter from the Under Secretary of the Navy the plaintiff was notified that his appeal from the Bureau of Ships was denied and that it was his final action in connection with his appeal. Therefore, plaintiff has exhausted his administrative remedies.

4. On March 25, 1952, a Complaint to Hold Unlawful And Set Aside Agency's Action was filed in this Court C. A. No. 1307-52, on October 28, 1952 an order was signed by this Court denying the defendant's Motion For Summary Judgment, March 9, 1954 an Order was entered to dismiss cause by defendant by suggestion of and unopposed by plaintiff, due to the delay of defendant in filing his answer, and to negligence of both parties to substitute party defendant.

5. March 19, 1954 a new Complaint To Hold Unlawful and Set Aside Agency's Action was filed in this Court C. A. No. 1174-54, July 8, 1954 a motion was filed in this Court to Substitute Party Defendant, which was consented to by Frank H. Strickler, Assistant U. S. Attorney.

6. That the plaintiff's attorney, B. Austin Newton, Jr., who represented the plaintiff since 1952 in this cause, withdrew as attorney of record May 4, 1956, by his motion and an order of this Court in contra to the plaintiff's request for the judge to withdraw from the case instead of plaintiff's counsel, whose services were essential, transcripts of proceedings May 4, 1956, The Plaintiff. Your Honor, I am a candidate for United States Senator
147 for the State of Maryland, on the Welfare Program. I am now nearly 60 years old and I look back in life and realize that we are living in a condition today that the people could, if they get together, share

and have an easier life. Therefore I am advocating a lower retirement age for everybody. And I therefore am opposing this and request that the Judge overrule Mr. Newton's withdrawing from my case, because I need Mr. Newton very much. I would like to ask the Judge, with no reflection on the Judge whatsoever, that he withdraw from the case so we could continue on. That is the purpose of my coming here today. I have to be consistant in my campaign procedure.

7. That the Court ordered plaintiff over his objections in above proceedings to secure other counsel and be prepared for trial by June 1, 1956.

8. That plaintiff diligently tried to secure counsel and had contacted about thirteen lawyers without success.

9. That considering the urgency of the matter Mr. W. Edward Plitt a Baltimore attorney appeared before this Court June 1, 1956, and was advised by this Court to appear June 25, 1956 and that the Court would take action on this cause if counsel appeared or not.

10. That the Court did act on the above cause June 25, 1956 on the motion and pleading of the defendant's counsel, relying or her every word regardless of the law, facts, records, etc. in this case and in spite of the statements and pleadings submitted by the plaintiff's counsel, filed April 18, 1956, etc., and the disinterest of the Court to acquaint himself with the law, facts, records, affidavits, etc. in this case.

11. The plaintiff avers that as this cause is a continuation of an earlier civil action, No. 1307-52 filed on March 25, 1952, which action was heard by Judge Luther W. Youngdahl in this Court on October 15, 1952 whereby the Judge stated after considering the exact record in the above cause that The Court:—

It seems to me a fundamental requisite in the due process of law and fair hearing that an individual is entitled

to be informed as to what specific charges he is being removed under—under all the circumstances in a case of this nature the Court should not grant summary judgment, but should let it go to trial.

and that Order of October 28, 1952 the defendant's Motion for Summary Judgment be and the same is
148 hereby denied, and plaintiff is granted leave to file an Amended Complaint, which was filed November 12, 1952, and in this proceeding on September 27, 1954, par 9 of Defendant's Answer, states—the plaintiff was not furnished with findings of fact—.

12. That the plaintiff was barred by laches can not be substantiated but to the contrary, the plaintiff's counsel filed the above captioned cause March 19, 1954 with the agreement and consent of the defendant's counsel, on July 8, 1954 a Motion To Substitute Party Defendant was also concurred in with defendant's counsel and by Order of this Court. That whenever there was an undue delay it was by the defendant's counsel, who far exceeded the sixty days after service for answering the complaint, and on one instance he took over one year to file.

13. In addition to the Baby Flat Top which was a major success in the wars, on March 5, 1945 Adm. W. F. Halsey wrote the plaintiff—your most interesting plan for a Special Combat Carrier—your interest and efforts are most commendable American gestures——.,

and on November 26, 1947 letters of patent were filed in the U. S. Patent Office, serial no. 788151 for a Combined Merchant and Military Vessel, on December 31, 1952 the plaintiff was invited by the then President-Elect, Dwight D. Eisenhower, through his then and now Assistant, Sherman Adams, to submit his progressive and economical suggestion for a Merchant Naval Vessel, to the Navy Department, after his Administration had taken office, and said:

"At that time it will be possible to give it the thorough study which it appears to deserve."

14. That the plaintiff is entitled to have this case reinstated because: a. Plaintiff's Objections To Defendant's Motion For Summary Judgment filed April 18, 1956, b. plaintiff's exceptional and unrewarded service to the government, i.e. nearly all design or basic plans were devised by him and at least 50% of production of plans as key engineer in a section of 8 men, c. by order of June
149 25, 1956, his Statutory Right has been denied and was inconsistant with substantial justice, facts and legality, d. the contributing negligence of the defendant's counsel in the previous cause, e. plaintiff is entitled to due process of law and a fair hearing, which would produce material facts, legality and more particularly the enormous benefits that would ensue to the welfare of this era.

15. That the plaintiff, although he has been employed during certain periods of employment with earnings as large as those during his employment by the government, through no fault of his own has been put to severe expense, hardship, etc., from May 15, 1951 to the present, in spite of the many commendatory letters from previous employers and that his removal was due to his diligent and conscientious efforts for the interest of this country and was in the way of a foreign born employee's chances for promotion, and that the duties which were performed by him at the Bureau are not now being performed by a bureau employee, because such an employee if any is probably a copyist, similar to the other employees, etc., therefore he does not have the initiative, foresight, vision, experience or productivity that the plaintiff exercised.

16. It is therefore hereby requested that this cause be reinstated, that false and derogatory practices be obliterated, that the Judge disqualify himself, because of his disinterest in acquainting himself with all the records,

etc., in above captioned cause, his age, prejudice, equilibrium, etc., which all make it impossible for him to render proper decisions in the matters before him, all put together with the incompetence, waste, idleness, disgrumbled and dissipating military and civilian personnel are all contributing factors to the cause of the terriffic present national debt and which also violates the principle for which this country stands ready to defend from foreign governments, yet tolerates and protects the persons running the government who are not interested in the country's welfare and do not practice the principles
150 and purposes intended and desired by our forefathers in establishing this country.

Whereupon the premises considered, plaintiff prays this Court to set aside Order and Reinstate cause, and that it is hereby demanded that this action be determined by a Right To Trial By Jury, in support thereof, Rule 38 of the Federal Rules of Civil Procedure.

/s/ Andrew J. Easter
Andrew J. Easter
In Proper Person

Certificate of Service

I hereby certify that service of the foregoing Motion To Set Aside Order And Reinstate Cause of above captioned action has been made upon defendant by leaving a copy thereof in the United States Attorney's Office, at the Court House, Washington, D. C., this 5 day of July, 1956.

/s/ Andrew J. Easter
Andrew J. Easter
In Proper Person

151 Filed Oct. 1, 1956

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ORDER

Upon consideration of plaintiff's motion to set aside order and reinstate cause, it is this 1st day of October, 1956,

ORDERED that the said motion be and the same is hereby denied.

/s/ F. Dickinson Letts
Judge

Certificate of Service

I hereby certify that service of the foregoing Order was made upon Andrew J. Easter, P.P., 2801 Adams Mill Rd., N.W., Washington, D.C. and upon Paul L. O'Brien, 729 15th Street, Washington, D.C. this 27 day of September, 1956, by mailing copies thereof to them at those addresses.

/s/ Kitty Blair Frank
Kitty Blair Frank
Assistant United States
Attorney

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5-6 Mrs. Frank contends that we were lax in not filing the present case until March of 1954. And yet in the original case the Government, while not subject to a judgment by default, of course, took about 11 months to file an answer to the original complaint in this case, and now is attempting to use the shield as a sword and say that we are now lax.

THE COURT: She is talking about the time that has elapsed after the dismissal of this case and the bringing of the new one.